IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

Crl.MC.No. 5002 of 2003(A)

C.R.NO.97/2003 OF AMARAVILA EXCISE RANGE, THIRUVANANTHAPURAM)
(OP.25798/2002 Dated 16/07/2003 OF THIS COURT)

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PETITIONER: ACCUSED NOS.1 AND 2:

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1. BABY, S/O. KUMARAN,
   LENIN NIVAS, NELLIASSERY DESOM, VELLARADA VILLAGE,
   NEYYATTINKARA TALUK, THIRUVANANTHAPURAM DISTRICT.

2. RAMACHANDRAN NAIR, S/O. SEKHARAN NAIR,
   LAKSHMIMANGALATHU HOUSE, NEMOM, EDAKKADU DESOM,
   PALLICHAL VILLAGE, NEYYATTINKARA TALUK,
   THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS: COMPLAINANT:

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1. STATE, REP. BY THE EXCISE INSPECTOR,
   AMARAVILA EXCISE RANGE, THIRUVANANTHAPURAM DIST.,
   REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
   KERALA, ERNAKULAM.

2. THE ASST.EXCISE COMMISSIONER,
   THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 23/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL M.C. NO. 5002 of 2006

Dated 23RD day of November, 2006

ORDER

Petitioners are the accused in C.R.No.97/2003 of Amaravila excise range, Thiruvananthapuram with respect to the offence under section 57(a) of the Abkari Act on the allegation that the toddy samples taken were found to contain 9.20% and 10.52% by volume of ethyl alcohol which is in excess of the prescribed content of 8.1% vide Rule 9(2) of the Abkari Shops (Disposal in Auction)Rules, 2002. It is the case of the petitioners that in view of the decision of the Division Bench of this Court in **State of Kerala v. Unni** (2005 (1) KLT 714), only the offence under section 56(b) can be sustained.

2. In the circumstance and in view of the decision cited above, the proceedings in C.R.97/2003 of Amaravila excise range is herewith quashed, with liberty to the authorities to proceed against the petitioners/accused for the offence under section 56(b) of the Abkari Act.

The Crl.M.C. is disposed of as above.

K.R.UDAYABHANU,JUDGE.

kvm/-